Wills and various methods
Of setting slaves free

The Risala: A Treatise on Maliki Fiqh

'Abdullah ibn Abi Zayd al-Qayrawani (310/922 - 386/996)

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(Including commentary from *ath-Thamr ad-Dani* by al-Azhari)

Abu Muhammad 'Abdullah, a Maliki faqih known as "Shaykh al-Faqih" and "little Malik". He was the head of the Maliki school in Qayrawan. He wrote *ar-Risala* and *an-Nawadir* and several other books. (His biography in the ***Tartib al-Madarik***)

35.01 BEQUESTS (WASIYYA, PL. WASAYA)

It is necessary for those who have a property to bequeath to take all necessary steps to prepare their wills. However there can be no will in favour of an heir.
Moreover the amount of property to will away must not exceed one third of the net estate. If this limit is exceeded the will shall not be executed except where the heirs give their consent.
When it comes executing wills, a will to set a slave free shall receive priority. Also
a slave whose master promised manumission upon the master's death shall receive priority if the promise was made in health rather than illness. And it shall be so whether the will involves the setting free of slaves or some other thing. In fact, priority is given to a will by a man who enjoys robust health, over payment of zakat he negligently failed to give out but then made a will to take care of it. Such a payment of zakat shall be defrayed from one third of the net estate. However priority shall be given to fulfilment of a promise of freedom which a master made to his slave while enjoying health.
When one-third of a net estate is insufficient to cater for the various claims from the will, the claimants shall share the one-third, nevertheless, in direct proportion to those claims. But such claims must not be the type given priority. Moreover a person is permitted to go back on his grant of manumission and related matters.

35.02 FREEING A SLAVE AT DEATH (TADBIR) OR AT A CERTAIN DATE (ILA AJAL)

What is meant by 'tadbir' is for a person to say to his slave "You are a mudabbar", i.e. "After I am dead you shall be free". Having done that, it is unlawful for the master to sell that particular slave, but he is permitted to exploit his labour and can take away his property as long as he is not sick. And if it is a slave woman, the master has the right to have sexual intercourse with her. But if she is already set free he must not have intercourse with her until after some time to save her from becoming an Umm Walad; nor can he sell her away; but he is permitted to exploit her labour and take away her property, as long as the appointed time for her freedom is not at hand. If the master should die under these circumstances, the mudabbar shall be free, out of the one-third of the net estate,

that is if his market value is not more than one-third of the net estate, while the expense of the total property of the master.

35.03 FREEING A SLAVE AFTER INSTALMENTS PAYMENTS (KITABA)

A 'mukatab' is a slave who bought his freedom from his master in consideration of a sum of money and has completed payment of the amount. The kitabah is lawful, in accordance with the agreement between the slave and his master over an amount of money to be paid by instalments which can be large or small. If a mukatab should fail to pay the amount stipulated for his freedom, he reverts to slavery and the amount taken from him by the master is lawful for the master to keep. Besides, nobody can have the authority to put into effect the agreement except the ruler, who does so upon petition when the master fails to effect his part of the agreement.

35.04 CHILDREN AND PROPERTY OF SLAVES

The offspring of slave women share their status as mukatabs, or mudabbars or receivers of a promise of manumission, at some appointed time, or given away as pledge. Also the son of a slave woman by a person other than her master has the same status as she has.
A slave is permitted to have property except where his master took it away. If he set him free or entered into a mukatabah with him without accepting the property, as one of the things the slave shall enjoy, the master shall have no right to divest the slave of his property. A master has no right to intercourse with his slave woman if a mukatabah agreement exists between them.
Moreover the fortune of the mukatab or mukatabah shall be that of their offspring and they gain their freedom the moment their parents do.

35.05 FREEING A GROUP BY KITABA

It is lawful to enter into an agreement of mukatabah with a group of people.
However, such slaves do not attain their freedom except when all the sum agreed upon has been fully paid.

35.06 RESTRICTIONS ON A MUKATAB

A mukatab is not free to set his own slaves free, nor is he permitted to waste his property in order to gain freedom. Nor

should he get married or go on a long journey without the permission of his master.

35.07 CHILDREN OF A DECEASED MUKATAB

And if he should die leaving a child, the child shall step into his shoes as mukatab and he will pay immediately, from the property of the deceased, what is left unpaid in the mukatabah agreement. His other children shall inherit what is left of the property. But if the deceased falls short of the debt, his children can then speculate in it and pay the debt by instalments if they are adult. But if they are minor and the estate is such that it could not cater for payment by instalments, they remain slaves.
But if he is not joined in his mukatabah agreement by any of his children, his master shall inherit him.

35.08 A SLAVE MOTHER OF HER MASTER'S CHILD (UMM WALAD)

If a man made his slave woman pregnant, he shall remain free to enjoy sexual relations with her as long as he lives, and she shall be free after his death, whether or not her value is greater or less than one-third of his net estate. Under those circumstances, he shall not be free to sell her, nor it is lawful for him to exploit her labour or seek any other gains from her. But he shall be free to exploit the labour of her child whom someone else fathered. However, such a child enjoys the status of his mother, and becomes free the moment she is set free.
A slave woman acquires the status of Umm Walad even if her pregnancy results in abortion. Withdrawal of the penis when about to have orgasm cannot serve as an excuse to reject paternity of her child once he admitted having intercourse with her.
But if he should claim that the slave woman observed an istibra and that he did not have intercourse with her afterwards, then the child she gave birth to should not be linked with him.

35.09 OBSTACLE OF SLAVES DEBT

Further, it is unlawful for a person whose debts exceed the value of his property, to voluntarily set a slave free.

35.10 FREEING PART OF A SLAVE (BI-S-SIRAYA)

Again if a person grants partial manumission to his slave, the ruler has the right to make it complete compulsorily. And if the slave is jointly owned the value of the other half is assessed, and the

master wishing to set free the slave is made to pay up. But if he does not have the money to effect total manumission, the share of the co-master remains slave. That is, the slave shall remain partly free and partly slave.

35.11 FREEING BECAUSE OF MUTILATION (MUTHLA)

If a master disfigures his slave clearly, such as by cutting off a limb or some other organ, the slave is granted freedom by the ruler compulsorily.

35.12 FREEING BECAUSE OF RELATIONSHIP (QARABA)

If by some chance a man becomes the master of his own parents or any of his children or grandchildren, or his grandparents, or his uterine, consanguine or germane brother, then each and every one of them shall be free at his expense.

35.13 FREEING BY CONCOMITANCE (TAB'IYYA)

Moreover if a master sets free a woman slave who is pregnant, then the foetus is automatically free as well.

35.14 FREEING BECAUSE OF AN OBLIGATION

When a man is under an obligation to free a slave, he is not to manumit any slave who is about to gain his freedom through tadbir or kitabah or some other means. Nor is he free to liberate a blind slave or one whose hand has been cut off, or a similar person, nor a slave who is a non- Muslim. Besides, it is not lawful to liberate a minor nor a person interdicted from transactions with his property.

35.15 PATRONSHIP (WALA')

Clientage (in Islamic law) goes to the person who sets a slave free. It is not lawful to sell clientage or to give it away. If a persons's slave gained freedom at someone else's expense, the clientage nevertheless goes to the original master.
If a non- Muslim slave embraces Islam upon gaining freedom, his clientage shall go to the Muslim community. The clientage of a person set free by a woman shall go to her; similarly the clientage of those who become free the moment she owns them, due to the nature of their relationship to her also the clientage of people she liberated goes to her. A woman cannot inherit a slave who has been set free by someone other than her, such as her father or her son of her husband or someone else.

Moreover, the estate of a man set free in a sa'ibah (i.e. let loose) method goes to the whole of Muslim community. But his clientage goes to the closest agnatic kin, the first person to die (the former master that is).
If the person who held the clientage of a former slave died and left two sons, the clientage shall go to both of them. If, subsequently, one of them died leaving the two sons, the surviving brother shall have the clientage exclusively. But if these sons of the benefactor both died, one leaving a son and the other two sons, the clientage shall be shared by these three grandsons of the benefactor, each holding one-third of it